71 (2)

No. 07-120

IN THE

SUPREME COURT OF THE UNITED STATES

Ivan Lambert (pro se),

Petitioner,

v.

United States Department of State and
Michael Chertoff, Secretary of
Homeland Security

Respondents.

**On Petition For a Writ of Certiorari
To The United States Court of Appeals
For The Eight Circuit**

PETITION FOR REHEARING

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REASONS FOR PETITION FOR REHEARING

My mother died unexpectedly on August 13, 2007. One of her wishes was that all her mother's heirs have a choice to claim US citizenship (she had asked to join or intervene at the appeals level but the Appeals court was silent on this issue). As executor to her estate (App. 1), it is my right and responsibility to continue to press these claims on her behalf and my grandmother's behalf (It is my family tradition that the two oldest siblings in the family act as executors to their parents estate; my mother was also executor to her parents' estate). In ***Hodel v. Irving***, 481 U.S. 704 (1987) heirs to the deceased were allowed standing to assert the claim of taking of property without just compensation against the Federal government ("At common law, a decedent's surviving claims were prosecuted by the executor or administrator of the estate"). In my grandmother's case, the right of descent at stake is far more precious (See ***May v. Anderson***, 345 U.S. 528 (1953) "rights far more precious then property rights" and ***Federenko v. United States***, 449 U.S. 490 (1981) "citizenship is a priceless treasure").

One of the claims I made to the District Court was that 8 USC 1401 h violates my grandmother's equal protection rights guaranteed under the 5th amendment and that I have standing to assert these claims. The District court disagreed, and described these injuries as "hypothetical and it happened to someone else a long time ago". The District court's analysis does not square with similar cases dealing with 8 USC 1401 h and its predecessor Section 1993 of the Revised Statutes of 1874 (***Elias v. United States Department of State***, 721 F. Supp 243 (N.D.

Cal. 1989); ***Aguayo v. Christopher***, 865 F. Supp. 479 (N.D. Ill 1994); ***Wauchope v. State Department***, 985 F. 2nd 1407 (9th Cir. 1993) ***Breyer v. Meissner***, 214 F. 3rd 422 (3rd Cir. 2000)). For these courts "hypothetical or that it happened to someone else a long time ago" were not impediments to looking at the merits of each respective case. The Appeals court makes no mention of my grandmother's injuries in its disposition, except that the District court did not abuse its discretion in denying the joining of my children. Therefore it is assumed that it affirmed the District Court's dismissal on these grounds. The Appeals Court decision comes not only into direct conflict with the 9th and the 3rd circuit, but also the Supreme court in ***Miller v. Albright***, 523 U.S. 420 (1998). In ***Miller v. Albright***, supra, petitioner was allowed to stand for her father's equal protection rights even though his only impediment to challenging 1409 was the dismissal he had received from the lower court. In both ***Miller v. Albright***, supra and later ***Nguyen v. INS***, 533 U.S. 1 (2001) heightened scrutiny was used, since 1409 was alleged to discriminate against men in their ability to transmit to their children born out of wedlock.

The claim that I made to the District court was that 8 USC 1401 h continues to discriminate like its predecessor (Section 1993), based on my grandmothers gender, since the retention of the physical presence requirements continues to deny transmission of her citizenship to all her heirs.

My standing on behalf of my grandmother, and the merits of my case garners support from the 3rd Circuit and the 9th Circuit where both courts allowed standing for children of deceased US mothers to challenge the predecessor of 8 USC 1401 h (Section 1993) and 8 USC 1401

(2). ***Wauchope***, supra employed a rational basis review and ***Breyer***, supra employed a heightened review fashioned after ***Miller***. Both cases found that Section 1993 and 8 USC 1401 (2) violated the guarantee of equal protection for American women whose children were born before 1934 ("The 1994 amendment does not then "completely and irrevocably eradicate the effects" of the discrimination against mothers contained in Section 1993)

Finally, the Appeals Court's decision is in tension with extent Supreme Court precedent allowing standing to those who had been injured, who have a close relationship to the third party, and the third party cannot assert their own rights (See ***Pierce v. Society of Sisters***, 268 U.S. 510 (1925); ***Griswold v. Connecticut***, 381 U.S. 479 (1965); ***Singleton V. Wulff***, 428 U.S. 106 (19796); ***Hodel v. Irving***, 481 U.S. 704 ((1987) and ***Campbell v. Louisiana***, 523 U.S. 392 (1998)

CONCLUSION

My mother's death and attending obligations has highlighted for me that my grandmother's equal protection claims have been arbitrarily ignored by the lower courts. My case should be decided on all its merits, therefore I plead with this court to grant a Writ of Certiorari and allow me standing to press her equal protection claims as her legal representative.

Respectfully submitted

Ivan Lambert
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Appendix 1

Will

I Lucille Maurice of the City of Winnipeg, Manitoba do hereby revoke all former wills made by me and declare this to be my last Will. I give and bequeath to my six children Ivan, JoAnn, Marc, Donald, Carole, Mona all of my estate comprised of:

a) revenues from the sale of my house and car
b) all monies in my account no.519835 at the Caisse Populaire in St Boniface
c) all monies from my RIFS, after payment of taxes, also at the caisse populaire

Further to this, I wish all my personal belongings be disposed of in the following manner

a) all objects given to me as gifts be returned to the donor
b) that everyone in the family including spouses and grandchildren receive some object that is meaningful to him or her, as a reminder of me.
c) That the rest of my belongings be shared in a fair and equitable.

I appoint Ivan Lambert and JoAnn Prociw as executors of this last will.

In witness whereof I have hereunto set my hand this 9th day February 2002

Lucille Maurice
249 Bertrand St. St Boniface

Signature of witness G Ewart
73 Sonning Bay 204 253 6822

Signature of witness Anna Labelle
323 ave, Wavell 204 284 1621

CERTIFICATE

I swear and affirm under the laws of the United States that I have submitted this petition in good faith because of intervening circumstances which are substantial and controlling.

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